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UNITED NATIONS CONFERENCE ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE

SECOND COMMITTEE

SUMMARY RECORD OF THE 2nd MEETING

Held at the Austria Center Vienna,
on Wednesday, 10 April 1991, at 9.30 a.m.

Chairman: Ms. J. VILUS (Yugoslavia)

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The meeting was called to order at 10 a.m.

ELECTION OF A VICE-CHAIRMAN AND A RAPPORTEUR (agenda item 2) (continued)

1. Mr. HORNBY (Canada) nominated Mr. Fujishita (Japan) for the office of Vice-Chairman.

2. Mr. GORODISSKY (Union of Soviet Socialist Republics) nominated Ms. Strolz (Austria) for the office of Rapporteur.

3. Mr. Fujishita (Japan) and Ms. Strolz (Austria) were elected Vice-Chairman and Rapporteur, respectively.

CONSIDERATION OF ARTICLES 17 TO 19, AND 21 TO 25, OF THE DRAFT CONVENTION ON THE LIABILITY OF OPERATORS OF TRANSPORT TERMINALS IN INTERNATIONAL TRADE (agenda item 3) (continued) (A/CONF.152/5, 6, 7 and Add.1 and Add.1/Corr.1 and Add.2)

Article 19 (A/CONF.152/C.2/L.7)

4. Mr. HORNBY (Canada) said that the purpose of the proposed amendment to paragraph 3 of article 19 was to reflect in that article the criteria for the scope of application of the Convention that were contained in subparagraphs 1 (a), (b) and (c) of its article 2.

5. It was standard practice to include a federal-state clause in a private international law convention, and the acceptance of his proposed amendment would facilitate his country's accession to the Convention.

6. He hoped that the Committee would approve the proposal, subject to minor changes by the Drafting Committee.

7. Mr. FUJISHITA (Japan) supported the proposed amendment but thought it was unnecessary to include the word "if" at the beginning of subparagraph (b). However, a decision on that point could be left to the Drafting Committee.

8. Mr. LARSEN (United States of America) supported the proposal, as he believed it was intended to bring about broader application of the Convention.

9. Mr. ZHANG Kening (China) supported the Canadian proposal.

10. Mr. GORODISSKY (Union of Soviet Socialist Republics) had some reservations regarding the proposal. Although he agreed that the provisions of article 2 and article 19 should correspond, Committee 1 had yet to make a decision on article 2.

11. The CHAIRMAN said that articles 2 and 19 were indeed closely connected, and Committee 1 had not yet considered article 2. However, the representative of Canada had indicated that his proposal was subject to adjustment by the Drafting Committee. The Drafting Committee could be instructed to adjust the wording of the proposal so as to bring it into line with any changes that Committee 1 might make to article 2. She suggested that the Committee might wish to approve the Canadian proposal on that understanding.

12. Mr. HORNBY (Canada) confirmed that the Chairman's summary accurately reflected his position.

13. The Canadian proposal was approved, subject to adjustment by the Drafting Committee, by 9 votes to 1, with 3 abstentions.

Article 21 (A/CONF.152/C.2/L.6, L.8)

14. The CHAIRMAN invited the Committee to debate the Philippines amendment (A/CONF.152/C.2/L.8) first, since it was the furthest removed from the original text.

15. Mr. BELLO (Philippines) said the purpose of article 20 was to prevent reservations from being made to the Convention. Article 21, however, provided a loophole for reservations, since declarations could take the form of reservations, and for that reason its deletion was proposed.

16. Mr. FUJISHITA (Japan) said he did not consider article 21 to be incompatible with article 20 since the word "declarations" therein referred only to declarations made under the provisions of article 19 and not to any interpretative declaration made in the context of international public law.

17. Mr. HORNBY (Canada) pointed out that articles virtually identical to articles 20 and 21 were to be found in the United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980). The existence of such articles was therefore standard practice in international trade law conventions.

18. Mr. ZHANG Kening (China) said he shared the Japanese view that the declarations referred to in article 21 were those mentioned in article 19. They were therefore not incompatible with article 20.

19. Mr. SOLIMAN (Egypt) said he considered article 21 to be clear and precise. It should be maintained in its present form.

20. Mr. ASTAPENKO (Byelorussian Soviet Socialist Republic) said he, too, considered there to be no direct link between articles 20 and 21. However, in order to avoid confusion and make clear that the declarations referred to in article 21 were those mentioned in article 19, he proposed that the text of the Convention should be rearranged so that those two articles were next to each other and article 20 no longer came between them. The Philippines might find that an acceptable solution.

21. Mr. KEINAN (Israel) said that, for the reasons given by Egypt and Canada, article 21 should be left as originally drafted.

22. Mr. BELLO (Philippines) said his principal objection to article 21 was that it referred declarations to the Convention as a whole; restriction of their application to article 19 might be acceptable.

23. Mr. LARSEN (United States of America) said there appeared to be some confusion over the use of the word "declaration". In treaty practice, States were entitled to make declarations as to the interpretation they gave to a convention, which would remain in effect unless challenged by other Contracting States. The declarations mentioned in article 21 therefore did not pertain to article 19 only, but to the entire Convention. Article 21 should therefore remain unchanged.

24. Mr. FARIDI ARAGHI (Islamic Republic of Iran) said the article should remain as drafted.

25. Mr. BELLO (Philippines) said that the comment by the United States strengthened his concern over the implications of the wording of article 21. However, in view of the lack of support for his proposal, he would withdraw it.

26. The CHAIRMAN invited the Committee to consider the amendment to article 21, paragraphs 1 and 4, proposed by Japan (A/CONF.152/C.2/L.6).

27. Mr. FUJISHITA (Japan) said his delegation's amendment was intended to clarify the point that the declarations mentioned in article 21 referred to those provided for in article 19 only. Provisions similar to those in articles 19 and 21 appeared in many international conventions, and he doubted whether the view that interpretative declarations were possible under the terms of article 21, and especially of its paragraphs 3 and 4, was valid.

28. Mr. SOLIMAN (Egypt) said that the declarations mentioned in article 21 referred to the Convention in its entirety. The text of the article should therefore remain as drafted.

29. Mr. ASTAPENKO (Byelorussian Soviet Socialist Republic) endorsed the proposed amendment. A point of substance was involved. With regard to the United States' reference to interpretative declarations, the Vienna Convention on the Law of Treaties, in its Part III, Section 3, "Interpretation of treaties", nowhere made reference to declarations. Use of a declaration for such a purpose in an international contract could therefore not be considered acceptable. The only way for a State to object to a given provision in a convention would be by making a reservation, but in the present instance that had been excluded. Although there was nothing to hinder the Conference from adopting provisions to enable States to make declarations giving their interpretation of the Convention, that would run counter to the intention of its authors, which was to make the provisions of article 21 refer exclusively to article 19.

30. Mr. ZHANG Kening (China) expressed support for the Japanese amendment and agreed, as proposed by the representative of the Byelorussian SSR, that articles 19 and 21 should be next to each other.

31. Mr. LARSEN (United States of America) said the reference by the representative of the Byelorussian SSR to the coverage of declarations in the Vienna Convention on the Law of Treaties was correct. He therefore had no further objection to the Japanese amendment.

32. Mr. GORODISSKY (Union of Soviet Socialist Republics) said the Japanese amendment was quite acceptable. However, there were other articles of the draft Convention, such as article 23 (Revision and amendment), for which article 21 might have implications. It might therefore be preferable to retain the original wording.

33. Mr. ZHANG Kening (China) said that the representative of the Soviet Union had made an important point. However, he felt the objection could be met by retaining the Japanese amendment with a blank left after article 19 for insertion of the numbers of other relevant articles.

34. The CHAIRMAN put the Japanese amendment (A/CONF.152/C.2/L.6) to the vote, on the understanding that the question of a possible change in the sequence of articles 19, 20 and 21 and the citation of any further article numbers in article 21 would be referred to the Drafting Committee.

35. On that understanding, the amendment was adopted by 9 votes to 5.

Closing formula

36. The CHAIRMAN invited the Committee to consider the last two paragraphs of the draft Convention.

37. The final two paragraphs (closing formula) were adopted and referred to the Drafting Committee, on the understanding that the details of place and time would be inserted subsequently.

The meeting rose at 11 a.m.